

## MEMORANDUM

**TO:** Technical Steering Committee

**FROM:** Dolores Boogdanian, Assistant General Counsel

**THRU:** Gary Davis, Jr., General Counsel

**RE:** State Forester

**DATE:** June 19, 2009

---

This memo serves to outline the legislative concept of the State Forester.

Under the general statutory definitions set forth in G. L. c. 4, § 7, Clause 46 defines the "forester", "state forester" and "state fire warden" to mean the commissioner of the [Department of Conservation and Recreation] or his designee. These defined terms are used in a number of state statutes. The term "forester," however, is not used consistently.

The term "state forester" is used in G.L. c. 61, and is defined as the Commissioner of DCR. The state forester is responsible for determining whether a private owner's land qualifies as forest land for purposes of local real estate tax classification, and for approving the owner's forest management plan. The state forester is also responsible for approving management plans under G.L. c. 61A or c. 61B.

The term "state forester" is also used in the Wetland Protection Act (WPA. Under the WPA definitions in G.L. c. 131A, §1, an owner can claim he is engaged in agricultural activities for the purposes of the WPA if, among other things, the state forester has approved the owner's "planned program to improve the quantity and quality of a continuous crop of forest products" on his or her land. The term "state forester" is also used in G.L. c. 132, §16, which provides that, for municipalities to seek reimbursement of costs for care of public shade trees in their communities, they must have a public shade tree management plan approved by the state forester. In all these cases, the "state forester" is the Commissioner of DCR.

Under G.L. c. 48, §8, the term "forester" is also defined as the commissioner of DCR. G.L. c. 48 generally applies to the responsibilities of local forest wardens and fire departments, but, for example, specifically authorizes the "forester" to set state-wide rules regarding granting or revocation of open air fire permits by local authorities (c. 48, §13), or assist or take over local fire suppression activities if needed (c. 48, §24). Elsewhere in G.L. c. 48, however, the term "forester" may not be the commissioner of DCR. For example, in G.L. c. 48, §15, the "forester [and] the state fire warden" are authorized to arrest someone who sets or maintains an illegal fire. To the extent the "state fire warden" is also the Commissioner of DCR (as provided in G.L. c. 4, §7, Clause 46), the term

"forester" implies a different party. There is nothing in Chapter 48 that helps to explain this anomaly. Similarly inconsistent recitations are found in G.L. c. 48 in §19,<sup>1</sup> §22,<sup>2</sup> and §28.<sup>3</sup>

Later in Chapter 48, under §28B, there is a reference to "the director of the division of forestry." It is not clear if this is an incorrect reference to the former DEM Division of Forests and Parks, or to the [former] Bureau of Forestry within that Division. In any case, if the director of the division (or bureau) determines that a significant forest fire hazard exists, the local fire warden shall "upon the order of the forester" patrol local forests to prevent fires.<sup>4</sup>

The term "forester" is used in G.L. c. 132, as well, but in this statute is defined in G.L. c. 132, §1, as the Director of the Division of State Parks and Recreation. The forester is directed to promote the perpetuation, extension and property management of the public and private forest lands of the Commonwealth. But throughout most of Chapter 132, it is the commissioner of DCR that is specifically authorized to act in connection with the state forests, including acquiring forest land (§30), promulgating rules and regulations in connection with the use thereof (§34), granting rights in such state forest lands, and selling forest products therefrom (§34A), and laying out and constructing trails within the state forests (§38). At the point in Chapter 132 where the provisions of the Forest Cutting Practices Act are described (§§40 – 46), the term "forester" is no longer used, and the Director of State Parks and Recreation is explicitly referred to in the relevant sections.

Because of the different nomenclature used in DCR's various statutory provisions, the Office of General Counsel urges that an effort be made to make them internally consistent, as well as consistent to each other. In the meantime, this office continues to advocate that the agency move towards identifying itself as "the Department of Conservation and Recreation" as a way to describe the agency's roles and duties in a unified manner.

---

<sup>1</sup> "The forester, or any duly authorized assistant, the state fire warden and the forest wardens in cities and towns are hereby authorized to inspect wood or lumber operations, and also the rights of way of electric, telephone and telegraph companies' transmission lines, to determine whether the slash and brush are disposed of in accordance with sections sixteen to eighteen, inclusive."

<sup>2</sup> "The forester or his assistants or the state fire warden may inspect all appliances described in the preceding section to determine if they are provided with suitable spark arresters."

<sup>3</sup> "The state fire warden shall report annually to the forester upon his work and upon the forest fires occurring in the commonwealth. This report shall be included in the report of the commissioner of environmental management *[sic]* relative to the acts of the forester."

<sup>4</sup> To the extent one may be tempted to assume the term "forester" in this case (and in the earlier provisions) refers to the Director of the Division of State Parks and Recreation, the next section seems to negate that assumption, for G.L. c. 48, §28C, specifically refers to "the director of the division of forests and parks" (now the director of the Division of State Parks and Recreation). It therefore provides no assistance in determining how the term "forester" should be interpreted.